

County of San Luis Obispo

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DAVID EDGE
COUNTY ADMINISTRATOR

To: Board of Supervisors

From: Gail Wilcox, Deputy County Administrative Officer

Date: June 19, 2006

Subject: Discussion about possible options for County involvement in the Los Osos Wastewater Project

Recommendation:

It is recommended that the Board:

- 1) Support legislation that allows the County, **at its discretion and upon confirmation of conditions as outlined in this report**, to assume responsibility for the design, construction and temporary operation of a community wastewater treatment system in Los Osos; and
- 2) Approve the key elements of a legislative solution outlined in this report as **required conditions** for the County's agreement to assume responsibility for this project; and
- 3) Approve the Los Osos Wastewater Treatment Project strategy and objectives included in this report in order to minimize County taxpayers' risk and provide the highest probability for success on this project.

Background:

Please review the attached "Report on Policy and Legislative Considerations Related to the Los Osos Community Wastewater Treatment Project" as it contains a significant amount of background information on this issue.

Discussion:

County staff have been in discussions with Assemblyman Sam Blakeslee and other state representatives for the past several months about what role, if any, the County might play in resolving the wastewater issue in Los Osos. The County has no legal obligation to be involved in this matter and staff entered these discussions with the understanding – and overriding concern – that any agreement to become involved carries with it the potential for adversely impacting the County's financial status and the important services we provide to the public. However, a number of factors – including the LOCSD's deteriorating financial status, the possible dissolution of the LOCSD, and the continued delay in addressing the community's water quality issues – resulted in the initiation of these discussions. The goal of these discussions has been to develop information and prepare recommendations for the

Board to determine whether the County should consider playing a role in this matter and, if so, under what conditions.

In reviewing options for the County's involvement in this issue, a legislative solution – coupled with agreement by various other governmental agencies to support the County – appears to be the route that could provide the most protection for the County's general taxpayers. To that end, and in response to Mr. Blakeslee's inquiry, staff crafted what we believe are required elements of any solution that involves the County. We appreciate Mr. Blakeslee's agreement to incorporate most of our key elements in the proposed legislation and understand that the legislative environment in Sacramento does not appear to allow for a solution that guarantees the County absolute protection should the Board decide to become involved. Those key required elements, which we recommend your Board approve today are:

1. An opportunity for property owners within the affected area to demonstrate (via a Proposition 218 election) their willingness to fund, through property assessments, the cost of this project; and
2. Agreement that, in the absence of property owners' commitment to pay for this project, **the County has no responsibilities or obligations in relation to this project**; and
3. State water board agreement to expedite processing of a low-interest loan; and
4. State and/or regional water boards agreement to hold enforcement actions in abeyance based on an agreed upon schedule for completion of this project; and
5. Agreement that the LOCSD's current liabilities remain their obligation (i.e. not transferred to the County); and
6. Agreement that the LOCSD will immediately suspend further actions on this project to avoid duplicative or cross purpose efforts and, in the event the Board agrees to assume project responsibility, the County will develop the project in the manner that it deems appropriate within the confines of applicable laws and regulations

In addition to legislation, Mr. Blakeslee has drafted a "framework" for a solution to this issue. Based on the outcome of today's discussion with the Board, staff will prepare a response to Mr. Blakeslee's request that the County review his proposed framework and identify legal, fiscal or operational constraints that must be addressed prior to moving forward.

On June 8, 2006, the LOCSD approved a resolution requesting that the County assist them "on a temporary basis, by providing the administrative, technical and funding assistance necessary to review, design, construct and initially operate a community wastewater system." The legislation introduced by Mr. Blakeslee calls for the County, at its discretion and contingent upon certain assurances, to assume responsibility for this project. **It is critical to emphasize that, if and when the County assumes responsibility for this project, we must have sole and final authority within the confines of existing laws and**

regulations. The County Public Works Department has prepared strategies and objectives for completion of this project (included in the attached Report on Policy and Legislative Considerations) should the Board elect to pursue this. **These objectives are essential for controlling County taxpayers' risk and creating the highest probability for a successful project.** Additionally, these objectives were designed to:

- Reflect the LOCSD's "compromise" agreement with the State (Fall 2005)
- Encourage community involvement and input
- Utilize existing/updated analyses
- Ensure completion of this project in as timely a manner as possible to prevent further escalation of costs for property owners

If the Board approves staff's recommendations, "next steps" include:

1. Legislation with sufficient protections for the County must be approved by the state legislature and signed by the Governor.
2. The LOCSD must suspend all work on this project and provide County staff with information and analyses completed to date.
3. If/when legislation is approved, County Public Works staff would begin the process of preparing for a Proposition 218 election (alternative site analyses, engineering reports, assessment analyses, etc.). This would require a mid-year budget adjustment to appropriate up to \$2 million from General Fund contingencies to pay for engineering analyses and Prop 218 election costs. Additionally, Public Works would require staffing adjustments to address this workload increase.
4. The County would conduct a Proposition 218 election to determine if property owners are willing to approve assessments to pay for this project.
5. If the 218 election fails, LOCSD would resume responsibility for this project unless/until the state assumes responsibility for this project.
6. If the 218 election passes, the County would enter into a "due diligence" period to ensure that necessary agreements or actions are taken by other involved agencies (e.g. low-interest loan is approved by state, enforcement actions are held in abeyance, etc.)
7. If/when those necessary agreements or actions are in place, the Board of Supervisors would consider adopting a resolution to assume responsibility for the design, construction and temporary operation of the wastewater system
8. If approved by Board of Supervisors via resolution, design and construction would begin (date depends largely on how long it takes to gain necessary assurances as outlined in #6 above)
9. After a minimum of three years of operation, County and LOCSD – with concurrence from Regional Water Board – may agree to return operational authority to the LOCSD

Conclusion

A recent newspaper article on this topic labeled the proposal to have the County assume responsibility for this project as a potential "compromise" under which the County would have "the most responsibility". The latter comment significantly understates the situation. The staff recommendation on this matter was not arrived at easily and we know that your Board is faced with a decision of great magnitude. Unlike the state and the LOCSD, the

County has no legal authority or obligation in this matter. However, we are aware that two different agencies – the Local Agency Formation Commission (LAFCo) and the State of California – may be able to force the County to assume responsibility for this project regardless of the merits of arguments against such an action. Since the majority of LAFCo members represent governmental agencies within San Luis Obispo County, we are confident they would take great care to evaluate the potential negative impacts of dissolving the LOCSD. The state, however, has many times demonstrated its willingness and ability to impose “solutions” that are detrimental to local governmental agencies. With this in mind, staff is presenting you with recommendations that we believe will provide us the most opportunity to manage this risk.

If, as a result of today’s discussion, a favorable Proposition 218 election and the other required actions outlined in this report, the County does assume responsibility for this project, the County Public Works Department will be assigned responsibility for ensuring its successful completion. The many hours of work and effort that have gone into this project so far pale in comparison to the work ahead. Public Works staff have repeatedly demonstrated their competency and success in delivering complex public works projects in recent years. A critical prerequisite for success on this highly problematic and contentious project, however, is your Board’s approval of the strategies and objectives outlined in this report. Without that approval, this project will likely suffer from continued delays. Further delays will exacerbate water quality issues and significantly increase the “price tag” associated with completion of this project.

Other Agency Involvement:

County Counsel, Public Works and the Auditor-Controller participated in this analysis and the preparation of this report. We are particularly appreciative of the efforts made by Deputy County Counsel Warren Jensen, who was charged with reviewing many complex legal issues with very little lead time. Please note that County Auditor-Controller Gere Sibbach has disagreements with the recommended action before you today. A letter explaining his concerns and recommendation is attached for your review.

Financial Considerations:

Preliminary estimates done by the Public Works Department indicate that the County would incur up to \$2 million in costs to prepare the analyses and reports necessary to conduct a Proposition 218 election. This estimate includes the cost of conducting the election. If the 218 fails (meaning that it fails to get approval from a majority of voters to impose property assessments to pay for this project) it is highly unlikely that the County will recover these costs, despite the fact that we would be conducting the election as a result of a state directive.

Based on a review of the financial documents that are available, it appears that approximately \$30 million has been spent over the past 30 years in an effort to get this project going. About \$6 million of that was paid by the County, approximately \$4.8 of which came from the County General Fund.

The total cost of this project – and the amount individual property owners will have to pay – depends on a number of factors, including:

- The extent to which the County is allowed/able to use prior analyses, contracts and permits
- The length of time before construction begins (construction costs have skyrocketed in the past couple years and it is expected that they will continue to increase at a rate that far exceeds typical inflationary rates). **Each month of delay on this project is projected to add at least \$400-500,000 to the total cost.**
- The state's willingness to expedite approval of a low-interest loan for this project (County staff is concerned that "conditioning" their approval on the LOCSD's repayment of their loan will impede progress on this project)
- The location of the wastewater treatment facility

Results:

This report is intended to provide the Board of Supervisors and the public with an overview of issues pertaining to the County's potential involvement in resolving the Los Osos wastewater treatment issue.

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GERE W. SIBBACH, CPA
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TO: HONORABLE BOARD OF SUPERVISORS
FROM: GERE W SIBBACH, AUDITOR-CONTROLLER
DATE: JUNE 19, 2006
SUBJECT: AUDITOR'S VIEWS REGARDING LOS OSOS LEGISLATION

I have worked over the past few months with a small group of County staff that have prepared today's report and recommendations for your consideration. They deserve the thanks of your Board for the work they have done to bring this discussion to today's meeting. In every regard I respect and support their judgments, but do not support every recommendation. The purpose of this memorandum is to offer my views as the independently elected Auditor-Controller, where they may differ from the staff.

I was initially asked by the Assistant County Administrator to assist in a study of the possible ramifications of dissolution of the Los Osos CSD. It became clear to me that the results were likely to be negative financially for the County and also unlikely to provide a timely solution to the wastewater problems in Los Osos. We then found out that LAFCO staff was interested in exploring possible compromise solutions short of dissolution, and that Assemblyman Blakeslee was exploring a possible legislative solution. I was asked to help study and respond to those efforts.

San Luis Obispo County has already spent approximately \$6.1 million toward a wastewater project for the community of Los Osos. As a result of the vote to form the Los Osos CSD, about \$4.8 million of that amount was never recovered by the County General Fund. Perhaps I am overly sensitive to this fact because I was the official that had to sign the checks. Notwithstanding my possibly jaded view, your Board must carefully consider the possibility that the Los Osos voters might choose to vote against the Prop 218 assessments required under the proposed legislation. Their vote will be difficult because the cost will be high, and because for some of them a delayed project is nearly as desirable as no project at all. Accordingly, I will not recommend that your Board accept the risk of another \$2 million of General Fund monies under these circumstances.

Staff has repeatedly requested that the legislation include an automatically triggered State imposed revenue source in the event the Prop 218 fails. We have been told that this is either unnecessary or not achievable in the current legislative environment. I believe the onus should be on the state regulators demanding this project to provide such an imposed revenue source if they wish the County to participate. Otherwise, let the state agencies run the project themselves at their own risk, or wait patiently until the people of Los Osos come to the consensus necessary to solve their problems.

**Report
on
Policy and Legislative Considerations
Related to the
Los Osos Community Wastewater Project
for the
San Luis Obispo County Board Of Supervisors**

**County Administrative Office
and
County Department of Public Works**

June 2006

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

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Report on Policy and Legislative Considerations Related to the Los Osos Community Wastewater Project – June 2006

A. Background

On November 3, 1998, Measure K98 – an initiative to create the Los Osos Community Services District (District) – was approved by 86.8% of the Los Osos’ voters who cast their vote on this matter. On May 21, 1998, the Local Agency Formation Commission (LAFCo) had previously adopted Resolution 98-6, which approved the formation of the District subject to the voters’ approval of Measure K98. Among its various provisions, LAFCo Resolution 98-6 approved the transfer of the “rights, duties and obligations” of the following list of services from San Luis Obispo County Service Area No. 9 (CSA No.9/County) to the District.

- Water
- Wastewater
- Fire and Emergency Medical Response
- Drainage
- Street Lighting
- Open Space Maintenance

The voter approved “reorganization” of CSA No. 9 to the District included the transfer of all real and personal property, including cash on hand and money due to CSA No. 9 but uncollected (water bills awaiting payment, for example). No unfunded obligations were transferred from the County to the District. In total, the reorganization transferred approximately \$3.5 million in budget reserves from the County to the District. In addition to revenues from user charges and special taxes, the reorganization also transferred approximately \$915,000 in annual property taxes to the District, which now totals about \$1.5 million annually.

Prior to the above actions, the County had expended approximately \$6.1 million on the project, including \$4.8 million in contributions from the County General Fund. County adopted assessments levied on Los Osos property owners in 1990 resulted in approximately \$1.6 million in pre-paid assessments at that time, but after the District’s creation (on June 15, 1999), the County Board of Supervisors approved refunds to property owners for those prepaid assessments, including interest, of nearly \$2.5 million.

The District efforts to develop a community wastewater project began in 1999. After spending over six years and nearly \$24 million¹ on their project, the District *temporarily suspended* construction of its wastewater facilities shortly after a special election on September 27, 2005 approved the recall of three (3) of the District’s Board members and the passage of Measure B, which intended to establish requirements for siting the wastewater treatment plant that was already under construction. Subsequently, San Luis Obispo County Superior Court Judge Martin Tangeman ruled that Measure B is invalid. At this time, Judge Tangeman’s ruling is still subject to appeal.

In addition to suspending construction of its wastewater facilities, the number of cases of litigation involving the District has significantly increased, including litigation with the State Water Resources Control Board (State Water Board) concerning \$6.4 million in State

¹ Districts Audited Financial Statements for the Year Ended June 30, 2005; Page 22; Note 7: Sewer Fund

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Revolving Fund loans advanced to the District for the suspended project, and \$28 million in payment disputes from contractors hired to construct the project. In addition, the Central Coast Regional Water Quality Control Board (Regional Water Board) has fined the District \$6.6 million as a result of suspending their project. The District is also appealing the fines. Between December 1, 2005 and April 1, 2006, the District spent nearly \$1 million on legal and engineering services relating to the litigation, personnel issues, administrative and managerial services, and the wastewater project.²

On February 17, 2006, a petition was submitted to LAFCo by a group identifying itself as the “Taxpayers Watch” requesting the dissolution of the District. On March 7, 2006, the San Luis Obispo County Clerk-Recorder certified 1,687 signatures of registered voters of the District on the petition (17.4%) which was sufficient to require that LAFCo consider dissolving the District at a public hearing in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. That hearing was originally scheduled for June 15, 2006, but due to a noticing error, will be continued to July 6, 2006.

In April 2006, the District’s credit rating was downgraded by Standard and Poors from BB to CCC.

On May 3, 2006, the District’s audit firm issued their Independent Auditors’ Report referencing the recall election, the suspension of the wastewater project and other subsequent events that “could involve the devaluation of certain district assets and may even cause *going concern* problems for the District.” In essence, the report reflected substantial doubt concerning the District’s ability to continue its existence. We have no reason to disagree with the District auditors’ opinion.

On May 4, 2006 San Luis Obispo County Superior Court Judge Roger Piquet appointed a Certified Public Accountant to examine the Districts records and submit a report to the court on the amount of State Revolving Loan Fund moneys that remain in District hands, an amount that will most likely be frozen for the benefit of the construction contractors who brought this action. That audit has not been completed.

Los Osos - A Divided Community

The recall election, the passage of Measure B by the District voters, and the subsequent petition filed by the community’s “Taxpayers Watch” group and signed by 17.4% of the District’s registered voters to dissolve the District are just a few of the indicators that the community is deeply divided on the wastewater project, its impact, and the ability of the District to continue to function. It is clearly arguable that the District may be in an untenable situation and may be paralyzed without the County’s help and special legislation crafted to help solve the District’s problems.

² The Tribune (San Luis Obispo, Calif); 5/30/2006 – see Exhibit “A”- obtained from:
<http://www.highbeam.com/library/docfreeprint.asp?docid>

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Community Wastewater Project – June 2006**

In correspondence to County staff dated June 1, 2006, the District's Interim General Manager, Dan Blesky, stated to Gail Wilcox, Deputy County Administrative Officer that:

"I am frustrated by the pressure on LAFCO in that the recalled Board members, those that failed to represent this community and so they want to take their ball and go home. I do not envy you or your staff being stuck in the middle of this morass."

Adding to the District's financial, legal and wastewater project challenges, the *personal attacks* associated with the District, its prior Boards, its new Board, and even attacks on County Supervisor Shirley Bianchi illustrate the emotional challenges of the "morass" that exists. We, County staff, do not believe it is appropriate for us to distinguish between the District's old Boards or its new Board as Mr. Blesky has done; it would not be appropriate for County staff to "take sides."

In contrast, we believe that, in some respects, the community's civic involvement should be acknowledged. It is all too easy to forget that community debate is a cornerstone to democratic forms of government; emotions are a normal part of debate. Nevertheless, the ability to resolve problems requires compromise and concessions, and rational dialogue is more likely to lead to resolutions than emotional attacks.

It is also important to distinguish between the District's willingness to resolve the current situation versus its ability to do so. Certainly we believe that the community's extensive civic involvement indicates its willingness to face its issues and pursue solutions. Both current and prior District Board members are actively involved in community debates. Individual citizens routinely spend countless hours of effort researching issues and expressing their opinions and recommendations. Yet, willingness is only one component of the prerequisites to implementing solutions.

We believe that although it is more than willing, and while we respect the District as an autonomous local agency, we are deeply concerned that it will be unable to resolve its problems – which now extend well beyond just a wastewater project. In addition, unless the current path is changed, the District's inability to resolve its problems might so negatively impact its overall condition that, consistent with the concerns of the District's auditor, the District may not be able to function at all. To reiterate a point of emphasis, though, our conclusions in this report recognize that Los Osos is divided and we do not believe it is appropriate for County staff to take sides on who is to blame – we simply believe that everyone must look to the future so that rational dialogue can prevail in pursuing a resolution to the current and long embattled situation.

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B. Current Status

The District is currently evaluating alternative approaches to a community wastewater project. Outcomes of the District's litigation could significantly jeopardize their already precarious financial status. Other unknowns include, but are not limited to, the following:

- The feasibility of project alternatives that the District is currently evaluating
- The ability of the District to resume work on the project it is holding in suspense if it became the District's desire to do so
- The District's basic ability to fund or implement any wastewater project
- The District's ability to fund the liquidated and contingent liabilities it faces as a result of its past and future conduct

In a letter to Dan Blesky and Gail Wilcox dated May 12, 2006 regarding "Collaborative Options to Dissolving the District" Paul Hood, Executive Officer for LAFCo, stated:

"The County appears to be in a better position in terms of resources and financial standing to complete the sewer project."

Subsequently, in the correspondence to Gail Wilcox dated June 1, 2006, Mr. Blesky stated that the wastewater project is "not the County's problem":

"This (the wastewater project) is not the County's problem and there are so darn many potential resolutions to it that it is sickening when we think about the time wasted on dissolution."

We agree with Mr. Blesky from the standpoint of formal legal roles and responsibilities. The community wastewater project is not formally or legally the responsibility of the County. The responsibility for the project is directly that of the District, and as a special district that is *independent* from the County, the District is, in fact, an autonomous local agency of the State of California. The Regional and State Water Boards, as agencies of the State of California, also have direct responsibilities for the project in their capacity to protect the quality of the State's waters.

We also believe it is important to recognize, that although Mr. Hood considers the County to be in a "*better position*" to implement a community wastewater project, that the County, as a local agency, is still constrained by the same laws and regulation that face the District. For example, when Proposition 218 (1996) was approved by state-wide voters and incorporated into the California State Constitution as Articles XIII C and XIII D, the previous ability of local elected officials to override a protest on an assessment district, on the basis of health and safety needs, was eliminated. Thus, the County does not have sufficient authority under existing laws to implement a project with certainty (i.e. unless it can get assessments approved by property owners in accordance with Article XIII D, and unless permits and other regulator approvals are obtained). The current status of significant uncertainty for the District's project would also exist for a County project - that uncertainty is impossible to mitigate through existing laws and regulations - the framework under which all LAFCo

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alternatives must be considered. As a result, County staff is extremely concerned about any solution that could be developed through LAFCo.

Although we appreciate Mr. Blesky's intent in indicating that the Project is not the County's problem, the District's actions and inactions do in fact create potential risks to County-wide taxpayers and County services and programs that benefit County-wide stakeholders. If a bankruptcy occurred, or the District was dissolved in a hasty manner, it could require significant County expenditures to wind up the affairs of the District.

In addition, although we are extremely concerned over options available to LAFCo under existing laws and regulations, we believe that the time and efforts spent on the dissolution and other alternatives has not been "time wasted," but rather, it has been "productive time" spent considering overall options that may be utilized to change the path that the District is clearly heading. Furthermore, we believe that the democratic principles of self governance rely on individuals and associations to seek changes in their government when that government is failing to protect and serve its constituents, and while we do not support a dissolution, we do understand the concerns of citizens who have signed the dissolution petition that is currently driving LAFCo's work efforts in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

In conclusion, the District's current status is so filled with uncertainty that its current path must change; the District is at risk of soon becoming effectively paralyzed. As demonstrated in the deterioration of the District's credit rating, the opinion of the auditor hired by the District, and as illustrated in growing litigation, among other issues, the District's current path is contrary to the best interests of the community of Los Osos and to avoid a total collapse, alternatives to the future should be considered.

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C. Alternatives – Looking to the Future

The following is a list of the alternatives for your Board’s consideration regarding policy and legislative solutions for Los Osos.

- No change / No County involvement at this time
- Alternatives developed through mutual agreement
- Alternatives developed through LAFCo
- Alternatives developed through State legislation

As previously stated, we believe that the District’s current path needs to change. Expeditionous resolution of the wastewater dilemma is critical. The “no change” alternative simply does not seem viable.

In addition, we do not believe that solutions that might be developed through LAFCo, or those solely relying on mutual agreement between the District and the County, would be productive to pursue. We are especially concerned about the unprecedented nature of the proposed dissolution and believe that, if approved by LAFCo, it would cause us to recommend that your Board direct us to evaluate the legal ability to seek bankruptcy for the District, in the County’s role as “successor in interest,” prior to distribution of District assets and payment of District obligations required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

Since non-legislative solutions inherently rely on existing laws and regulations, we are not optimistic that non-legislative solutions would succeed. Past efforts to develop a community wastewater project for Los Osos, without special legislation, over the past 30+ years has resulted in approximately \$30 million expended and no project.

In summary, of the various alternatives, we can only possibly favor those that are developed through special legislation. To support a legislative solution, we also believe that some specific and focused terms of a mutual agreement between the District and the County could be helpful in developing a final solution to the wastewater project. In the Fall of 2005, Assemblyman Sam Blakeslee was attempting to help develop a solution between the District and the State Water Board. We believe that the discussions at that time, and the terms agreed upon by the District, continue to point to possible compromises between local and state agencies in seeking a solution to the wastewater problem and developing a semblance of certainty for the community.

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D. Legislative Options

Regarding legislative solutions, the following two basic options exist:

- State Implemented - Authorizing State Agencies to take direct control of the project with new regulatory fee authority to fund the necessary efforts.
- County Implemented – Authorizing the County to conduct a vote of property owners in accordance with Prop. 218 (1996) to decide whether they wish to authorize the funding for a community wastewater project and overall legislative support for a collaborative solution.

A State Implemented Legislative Option

This legislative option would establish greater certainty if it could be approved by the Assembly, the Senate and the Governor. It would entail the State of California taking control of the wastewater project through an appropriate *state agency*, enacting a *regulatory fee* authority for that agency, and authorizing a solution funded through those regulatory fees. Since the regulatory fees would be authorized for a State agency to impose (presumably only under special circumstances) those fees would not be subject to Article XIID of the State Constitution that restricts *local agencies* from, among other actions, imposing assessments or special taxes without a vote of either property owners or registered voters. This approach could possibly use the County as an “*Implementing Agency*” – in a special role that would be legislatively established and that would contrast from the County’s normal role as a locally authorized agency. In essence, the County (if needed) would act on behalf of a specified state agency and would be paid by that State agency through fees authorized in the legislation.

While we believe that this approach may be legislatively permissible, legislative findings should be established that consider the health and safety issues, the current regulatory enforcement actions, and the history of extensive community review and debate, but that no solution has been developed by the community despite over 6 years of efforts and approximately \$24 million expended since the District took over the project.

Although we believe that this option would be the most expeditious to resolving the wastewater dilemma and setting the District on a path to resolution of its overall issues, we were told it is less legislatively viable because it would require development of new roles and responsibilities for State agencies against the perception that Los Osos is a “local” problem, and this legislative approach would also require specific legislative approval of a new regulatory fee authority. An additional challenge to this approach is the argument that a State implemented project should be the option of last resort.

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A County Implemented Legislative Option

While the State legislature should consider a State implemented project-approach if the Prop 218 election fails, the alternative of a County implemented solution appears more viable at this time. Combined with cooperative local policies aimed at turning the corner on the negative circumstances surrounding the current situation, and supported by mutual agreement between the District and County, it would be our hope that a successful Prop 218 vote of property owners, and cooperation from state agencies, would lead to the resolution of the wastewater project dilemma in the near future.

In considering details, we strongly believe that local policies and strategies that will be needed should begin with the discussions between the District and State officials that occurred during the Fall of 2005. In other words, despite the impasse that resulted last Fall, the concessions that the District did agree to, during discussions with the staff of the State Water Board, must be a prerequisite to County assistance. Specifically, resuming the construction of the conventional gravity collection system while also considering alternative treatment plant locations are important project-specific strategies that must be supported by all agencies for a County implemented solution to have a reasonable chance of obtaining property owner support.

As previously stated, resolving the wastewater dilemma is foremost in restoring the District's financial and legal condition. We are hopeful that the District would agree. In Mr. Blesky's June 1st correspondence, he also stated:

"I think that the County could help get all the parties back to the table, specifically the Regional Board and this District."

Under a County implemented project-approach, the County could consider taking an active role in developing a solution for Los Osos provided that sufficient legislative protection is afforded the County and provided that we receive assurances from other involved agencies as outlined elsewhere in this report. Any financial support provided by the County under a County implemented solution should be minimized in the event of an unsuccessful Prop. 218 election; and ultimately, all current liabilities, obligations and litigation of the District should remain the responsibility of the District.

Even with a resolution to the wastewater dilemma, the District could still find itself with continuing challenges as a result of existing litigation. Insufficient information exists at this time to know the extent to which the District's potential liabilities could be minimized through a County implemented approach to the wastewater project. It is our hope that cooperation between the County and the District could help minimize the liabilities and obligations of the District by, for example, considering whether existing collection system contractors can resume work and thereby minimizing existing payment disputes. **Under no circumstances, however, should your Board consider delegating or relinquishing any of your existing powers or authority – instead, the legislation must authorize new powers for the County, while holding the District accountable for their current and potential liabilities, and provide a framework for interagency cooperation.**

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E. County Project Objectives and Strategies

The County's project objectives for its involvement, if any, in the Los Osos wastewater project are those recommended for inclusion in special legislation for the project. The following list was included in correspondence from Gail Wilcox to Assemblyman Sam Blakeslee dated June 9, 2006 in response to his request for comments about a possible legislative solution to the Los Osos wastewater issue. The following objectives and project specific strategies if implemented by the County, are essential for controlling County taxpayer risk and for creating the highest probability for a successful project.

County project objectives for inclusion in special legislation:

1. An opportunity for property owners within the affected area to demonstrate (via a Proposition 218 election) their willingness to fund, through property assessments, the cost of this project
2. Agreement that, in the absence of property owners' commitment to pay for this project, **the County has no responsibilities or obligations in relation to this project**
3. State water board agreement to expedite processing of a low-interest loan
4. State and/or regional water boards agreement to hold enforcement actions in abeyance based on an agreed upon schedule for completion of this project
5. Agreement that the District's current liabilities remain their obligation (i.e. not transferred to the County)
6. Agreement that the District immediately suspend further actions on this project to avoid duplicative or cross purpose efforts and, in the event the Board agrees to assume project responsibility, the County will develop the project in the manner that it deems appropriate within the confines of applicable laws and regulations

County project strategies for inclusion in Board policy and/or an agreement with the District when specified:

- A. County expenditures prior to a Prop 218 hearing - not to exceed \$2.0 million.
- B. Scope strategies:
 - a. **Based on District's Fall 2005 compromise:**
 - i. Conventional gravity collection; essentially as designed
 - ii. Analysis of alternative treatment plant sites
 1. Conventional technologies
 2. Confer with District Board on developing objectives for alternatives review

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- b. Supplemental Scope strategies:
 - i. Community input –
 - 1. Utilize technical advisory committee (FTAC) for alternatives site review with representation from community and the District by including the District's engineer
 - 2. Conduct a community advisory election on top site alternatives
 - 3. With FTAC providing pro/con evaluations but not a final recommendation;
 - 4. Board of Supervisors makes final site and technology determination while considering community advisory election
 - ii. Co-equal analysis under CEQA for top site alternatives;
 - 1. Anticipate a supplemental Environmental Impact Report (EIR)
 - 2. Findings developed so that any of the top alternatives may be carried out (i.e. implemented).
 - iii. Discharge alternatives
 - 1. Input from District board on water management objectives;
 - 2. Timeliness in obtaining Regional Water Board permit approvals;
 - 3. Timeliness in other agency approvals.
 - iv. Prop 218 assessments proceedings
 - 1. Based on prohibition zone
 - 2. Substantially utilizing methodologies established by District's assessment engineer.
 - 3. Boundaries may be expanded through separate hearings
 - v. Employment of consultants:
 - 1. Will need sole source contracting to proceed quickly
 - 2. Intent to utilize District consultants through County professional services agreements, and District contractors through assignment agreements, if possible, for the following:
 - a. Assessment engineering
 - b. Collection system
 - c. Environmental Review
 - d. Municipal Finance team
 - e. District Engineer – for representation on technical advisory committee
 - 3. Intent to utilize existing or additional County consultants for the following:
 - a. Alternatives analysis, updated cost estimates and overall project management
 - b. Property acquisition and disposition evaluations
 - c. Other needed services
 - vi. Utilize County staff – need for additional position(s) to be determined

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C. Schedule Strategies

- a. Proceed as expeditiously as reasonably possible
- b. Attached schedule based on the following:
 - i. Concurrent efforts
 - 1. Prop. 218 proceedings
 - 2. Alternative site review
 - 3. CEQA
 - 4. Permitting
 - 5. Other agency involvement
 - ii. Sequence of milestones
 - 1. Sequence of Legislative and Policy milestones (timing is currently indeterminable but could proceed relatively quickly with mutual cooperation by District)
 - a. Special legislation approved
 - b. Confer with District board on scope related objectives stipulated above
 - c. Confer with District board on County/District agreement; adopted by District then County if recommended
 - d. Technical advisory committee formation
 - 2. Sequence of consultant and technical milestones
 - a. Prop. 218 assessment vote and re-initiate collection system construction when first possible (subject to funding – i.e. SRF or Assessment bonds); approach to employing contractors to be determined
 - b. Supplemental EIR with top alternatives treated co-equally; appropriate findings; ability to carry-out any of top alternatives
 - c. Community Advisory Election
 - d. Final Project Implementation Recommendations

D. Budget Strategies

- a. Do not exceed \$2.0 million in “at-risk” County funds
- b. Full recovery of County funds
- c. Develop detailed project approach so that consultant efforts, compensation and County costs are minimized if the Prop. 218 election fails.
- d. Pursue grant revenues to
 - i. Specifically seek funding for disadvantaged constituents;
 - ii. Utilize District resources where possible;
 - iii. Cooperate where possible to minimize District project and other administrative and legal costs

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